

AMENDED IN ASSEMBLY MAY 26, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1989

Introduced by Assembly Member Dickerson
(Coauthor: Assembly Member House)

February 18, 2000

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 1989, as amended, Dickerson. Firearms: restrictions on possession and ownership.

(1) Under existing law, any person who has been convicted of specified misdemeanor violations and who, within 10 years of the conviction, owns, or has in his or her possession or under his or her custody or control, any firearm is guilty of a public offense that is punishable by imprisonment in the state prison or in a county jail not exceeding one year, by a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill would include in this provision misdemeanor violations involving a person who ~~willfully~~ *knowingly* and maliciously ~~communicates to a witness to, or a victim of, the crime for which the person was convicted, a credible threat to use force or violence upon that person or that person's immediate family or any person who willfully threatens to commit a crime that will result in death or great bodily injury to another person, with the specific intent that the statement,~~ made verbally, in writing, or by means of an electronic

~~communication device, is to be taken as a threat prevents or dissuades or knowingly and maliciously attempts to prevent or dissuade any witness or victim from attending or giving testimony at any trial, proceeding, or inquiry authorized by law.~~

Because this bill would expand the scope of an existing crime, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 12021 of the Penal Code is
2 amended to read:

3 12021. (a) (1) Any person who has been convicted
4 of a felony under the laws of the United States, of the State
5 of California, or any other state, government, or country,
6 or of an offense enumerated in subdivision (a), (b), or (d)
7 of Section 12001.6, or who is addicted to the use of any
8 narcotic drug, who owns or has in his or her possession or
9 under his or her custody or control any firearm is guilty
10 of a felony.

11 (2) Any person who has two or more convictions for
12 violating paragraph (2) of subdivision (a) of Section 417
13 and who owns or has in his or her possession or under his
14 or her custody or control any firearm is guilty of a felony.

15 (b) Notwithstanding subdivision (a), any person who
16 has been convicted of a felony or of an offense
17 enumerated in Section 12001.6, when that conviction
18 results from certification by the juvenile court for
19 prosecution as an adult in an adult court under Section
20 707 of the Welfare and Institutions Code, who owns or has
21 in his or her possession or under his or her custody or
22 control any firearm is guilty of a felony.

1 (c) (1) Except as provided in subdivision (a) or
2 paragraph (2) of this subdivision, any person who has
3 been convicted of a misdemeanor violation of Section 71,
4 76, ~~136.5, 139, 136.1, 136.5,~~ or 140, subdivision (d) of
5 Section 148, Section 171b, 171c, 171d, 186.28, 240, 241, 242,
6 243, 244.5, 245, 245.5, 246, 246.3, 247, 273.5, 273.6, 417, 417.1,
7 417.2, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
8 (b) or (d) of Section 12034, Section 12040, subdivision (b)
9 of Section 12072, subdivision (a) of former Section 12100,
10 Section 12220, 12320, or 12590, or Section 8100, 8101, or
11 8103 of the Welfare and Institutions Code, any
12 firearm-related offense pursuant to Sections 871.5 and
13 1001.5 of the Welfare and Institutions Code, or of the
14 conduct punished in paragraph (3) of subdivision (g) of
15 Section 12072, and who, within 10 years of the conviction,
16 owns, or has in his or her possession or under his or her
17 custody or control, any firearm is guilty of a public
18 offense, which shall be punishable by imprisonment in a
19 county jail not exceeding one year or in the state prison,
20 by a fine not exceeding one thousand dollars (\$1,000), or
21 by both that imprisonment and fine. The court, on forms
22 prescribed by the Department of Justice, shall notify the
23 department of persons subject to this subdivision.
24 However, the prohibition in this paragraph may be
25 reduced, eliminated, or conditioned as provided in
26 paragraph (2) or (3).

27 (2) Any person employed as a peace officer described
28 in Section 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5
29 whose employment or livelihood is dependent on the
30 ability to legally possess a firearm, who is subject to the
31 prohibition imposed by this subdivision because of a
32 conviction under Section 273.5, 273.6, or 646.9, may
33 petition the court only once for relief from this
34 prohibition. The petition shall be filed with the court in
35 which the petitioner was sentenced. If possible, the
36 matter shall be heard before the same judge that
37 sentenced the petitioner. Upon filing the petition, the
38 clerk of the court shall set the hearing date and shall
39 notify the petitioner and the prosecuting attorney of the
40 date of the hearing. Upon making each of the following

1 findings, the court may reduce or eliminate the
2 prohibition, impose conditions on reduction or
3 elimination of the prohibition, or otherwise grant relief
4 from the prohibition as the court deems appropriate:

5 (A) Finds by a preponderance of the evidence that the
6 petitioner is likely to use a firearm in a safe and lawful
7 manner.

8 (B) Finds that the petitioner is not within a prohibited
9 class as specified in subdivision (a), (b), (d), (e), or (g)
10 or Section 12021.1, and the court is not presented with any
11 credible evidence that the petitioner is a person
12 described in Section 8100 or 8103 of the Welfare and
13 Institutions Code.

14 (C) Finds that the petitioner does not have a previous
15 conviction under this subdivision no matter when the
16 prior conviction occurred.

17 In making its decision, the court shall consider the
18 petitioner's continued employment, the interest of
19 justice, any relevant evidence, and the totality of the
20 circumstances. The court shall require, as a condition of
21 granting relief from the prohibition under this section,
22 that the petitioner agree to participate in counseling as
23 deemed appropriate by the court. Relief from the
24 prohibition shall not relieve any other person or entity
25 from any liability that might otherwise be imposed. It is
26 the intent of the Legislature that courts exercise broad
27 discretion in fashioning appropriate relief under this
28 paragraph in cases in which relief is warranted. However,
29 nothing in this paragraph shall be construed to require
30 courts to grant relief to any particular petitioner. It is the
31 intent of the Legislature to permit persons who were
32 convicted of an offense specified in Section 273.5, 273.6,
33 or 646.9 to seek relief from the prohibition imposed by this
34 subdivision.

35 (3) Any person who is subject to the prohibition
36 imposed by this subdivision because of a conviction of an
37 offense prior to that offense being added to paragraph
38 (1), may petition the court only once for relief from this
39 prohibition. The petition shall be filed with the court in
40 which the petitioner was sentenced. If possible, the

1 matter shall be heard before the same judge that
2 sentenced the petitioner. Upon filing the petition, the
3 clerk of the court shall set the hearing date and notify the
4 petitioner and the prosecuting attorney of the date of the
5 hearing. Upon making each of the following findings, the
6 court may reduce or eliminate the prohibition, impose
7 conditions on reduction or elimination of the prohibition,
8 or otherwise grant relief from the prohibition as the court
9 deems appropriate:

10 (A) Finds by a preponderance of the evidence that the
11 petitioner is likely to use a firearm in a safe and lawful
12 manner.

13 (B) Finds that the petitioner is not within a prohibited
14 class as specified in subdivision (a), (b), (d), (e), or (g)
15 or Section 12021.1, and the court is not presented with any
16 credible evidence that the petitioner is a person
17 described in Section 8100 or 8103 of the Welfare and
18 Institutions Code.

19 (C) Finds that the petitioner does not have a previous
20 conviction under this subdivision, no matter when the
21 prior conviction occurred.

22 In making its decision, the court may consider the
23 interest of justice, any relevant evidence, and the totality
24 of the circumstances. It is the intent of the Legislature
25 that courts exercise broad discretion in fashioning
26 appropriate relief under this paragraph in cases in which
27 relief is warranted. However, nothing in this paragraph
28 shall be construed to require courts to grant relief to any
29 particular petitioner.

30 (4) Law enforcement officials who enforce the
31 prohibition specified in this subdivision against a person
32 who has been granted relief pursuant to paragraph (2) or
33 (3), shall be immune from any liability for false arrest
34 arising from the enforcement of this subdivision unless
35 the person has in his or her possession a certified copy of
36 the court order that granted the person relief from the
37 prohibition. This immunity from liability shall not relieve
38 any person or entity from any other liability that might
39 otherwise be imposed.

1 (d) Any person who, as an express condition of
2 probation, is prohibited or restricted from owning,
3 possessing, controlling, receiving, or purchasing a firearm
4 and who owns, or has in his or her possession or under his
5 or her custody or control, any firearm but who is not
6 subject to subdivision (a) or (c) is guilty of a public
7 offense, which shall be punishable by imprisonment in a
8 county jail not exceeding one year or in the state prison,
9 by a fine not exceeding one thousand dollars (\$1,000), or
10 by both that imprisonment and fine. The court, on forms
11 provided by the Department of Justice, shall notify the
12 department of persons subject to this subdivision. The
13 notice shall include a copy of the order of probation and
14 a copy of any minute order or abstract reflecting the
15 order and conditions of probation.

16 (e) Any person who (1) is alleged to have committed
17 an offense listed in subdivision (b) of Section 707 of the
18 Welfare and Institutions Code, an offense described in
19 subdivision (b) of Section 1203.073, or any offense
20 enumerated in paragraph (1) of subdivision (c), and (2)
21 is subsequently adjudged a ward of the juvenile court
22 within the meaning of Section 602 of the Welfare and
23 Institutions Code because the person committed an
24 offense listed in subdivision (b) of Section 707 of the
25 Welfare and Institutions Code, an offense described in
26 subdivision (b) of Section 1203.073, or any offense
27 enumerated in paragraph (1) of subdivision (c) shall not
28 own, or have in his or her possession or under his or her
29 custody or control, any firearm until the age of 30 years.
30 A violation of this subdivision shall be punishable by
31 imprisonment in a county jail not exceeding one year or
32 in the state prison, by a fine not exceeding one thousand
33 dollars (\$1,000), or by both that imprisonment and fine.
34 The juvenile court, on forms prescribed by the
35 Department of Justice, shall notify the department of
36 persons subject to this subdivision. Notwithstanding any
37 other law, the forms required to be submitted to the
38 department pursuant to this subdivision may be used to
39 determine eligibility to acquire a firearm.

(f) Subdivision (a) shall not apply to a person who has been convicted of a felony under the laws of the United States unless either of the following criteria is satisfied:

(1) Conviction of a like offense under California law can only result in imposition of felony punishment.

(2) The defendant was sentenced to a federal correctional facility for more than 30 days, or received a fine of more than one thousand dollars (\$1,000), or received both punishments.

(g) (1) Every person who purchases or receives, or attempts to purchase or receive, a firearm knowing that he or she is subject to a protective order as defined in Section 6218 of the Family Code, Section 136.2, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year or in the state prison, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does not apply unless the copy of the restraining order personally served on the person against whom the restraining order is issued contains a notice in bold print stating (1) that the person is prohibited from purchasing or receiving or attempting to purchase or receive a firearm and (2) specifying the penalties for violating this subdivision, or a court has provided actual verbal notice of the firearm prohibition and penalty as provided in Section 6304 of the Family Code.

(2) Every person who owns or possesses a firearm knowing that he or she is prohibited from owning or possessing a firearm by the provisions of a protective order as defined in Section 6218 of the Family Code, Section 136.2 of the Penal Code, or a temporary restraining order or injunction issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure, is guilty of a public offense, which shall be punishable by imprisonment in a county jail not exceeding one year, by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine. This subdivision does

1 not apply unless a copy of the restraining order personally
2 served on the person against whom the restraining order
3 is issued contains a notice in bold print stating (1) that the
4 person is prohibited from owning or possessing or
5 attempting to own or possess a firearm and (2) specifying
6 the penalties for violating this subdivision, or a court has
7 provided actual verbal notice of the firearm prohibition
8 and penalty as provided in Section 6304 of the Family
9 Code..

10 (3) Judicial Council shall provide notice on all
11 protective orders that the respondent is prohibited from
12 owning, possessing, purchasing, or receiving a firearm
13 while the protective order is in effect and that the firearm
14 shall be relinquished to the local law enforcement agency
15 for that jurisdiction or sold to a licensed gun dealer, and
16 that proof of surrender or sale shall be filed within a
17 specified time of receipt of the order. The order shall also
18 state on its face the expiration date for relinquishment.

19 (4) If probation is granted upon conviction of a
20 violation of this subdivision, the court shall impose
21 probation consistent with the provisions of Section
22 1203.097.

23 (h) (1) A violation of subdivision (a), (b), (c), (d), or
24 (e) is justifiable where all of the following conditions are
25 met:

26 (A) The person found the firearm or took the firearm
27 from a person who was committing a crime against him
28 or her.

29 (B) The person possessed the firearm no longer than
30 was necessary to deliver or transport the firearm to a law
31 enforcement agency for that agency's disposition
32 according to law.

33 (C) If the firearm was transported to a law
34 enforcement agency, it was transported in accordance
35 with paragraph (18) of subdivision (a) of Section 12026.2.

36 (D) If the firearm is being transported to a law
37 enforcement agency, the person transporting the firearm
38 has given prior notice to the law enforcement agency that
39 he or she is transporting the firearm to the law
40 enforcement agency for disposition according to law.

1 (2) Upon the trial for violating subdivision (a), (b),
2 (c), (d), or (e), the trier of fact shall determine whether
3 the defendant was acting within the provisions of the
4 exemption created by this subdivision.

5 (3) The defendant has the burden of proving by a
6 preponderance of the evidence that he or she comes
7 within the provisions of the exemption created by this
8 subdivision.

9 SEC. 2. No reimbursement is required by this act
10 pursuant to Section 6 of Article XIII B of the California
11 Constitution because the only costs that may be incurred
12 by a local agency or school district will be incurred
13 because this act creates a new crime or infraction,
14 eliminates a crime or infraction, or changes the penalty
15 for a crime or infraction, within the meaning of Section
16 17556 of the Government Code, or changes the definition
17 of a crime within the meaning of Section 6 of Article
18 XIII B of the California Constitution.

